

**Notice of Allowability**

Application No.

10/644,664

Examiner

David T. Fox

Applicant(s)

KUVSHINOV ET AL.

Art Unit

1638

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed 30 October 2006.
2. ☒ The allowed claim(s) is/are 1-3,5-8,15-16,21-23,25-28,35-36 and 41-42 renumbered as 1-20.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |                                                                                                            |                                                                                       |
|------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|                                                                                                            | 9. <input type="checkbox"/> Other _____                                               |

***Examiner's Amendment***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

**IN THE SPECIFICATION:**

On page 1 of the specification, the paragraph on line 6 was replaced with the following:

**---CROSS-REFERENCE TO RELATED APPLICATIONS**

This application is a continuation-in-part of application no. 09/617,543 filed 14 July 2000, now U.S. Patent 6,849,776.---

On page 1 of the specification, line 9, "an" was replaced with ---and---.

On page 4 of the specification, bottom line, the following phrase was inserted before the period:

---- , now U.S. Patent 6,849,776---

On page 10 of the specification, line 6, "to" was replaced with ---two---.

On page 23 of the specification, line 19, "**EXAMPLE 5.**" was replaced with ---**EXAMPLE 6.**---

On page 24, line 9, "**EXAMPLE 6.**" was replaced with ---**EXAMPLE 7.**---

On page 25, line 4, "**EXAMPLE 7.**" was replaced with ---**EXAMPLE 8.**---

On page 27, line 20, "I" was replaced with ---in---.

IN THE CLAIMS:

Non-elected claims 17-20 and 37-40 were cancelled without prejudice.

Claims 1, 15, 21 and 35 were amended as follows:

In claim 1, lines 9-10, “ , and being” was replaced with ---which is---

In claim 1, line 11, “RC” was replaced with ---(RC)---

In claim 1, line 13, “and being” was replaced with ---which is---

---Claim 15 (Currently amended). The mechanism according to claim 1, wherein the embryo/germination specific promoter is [SH-EP] a cysteine endopeptidase (SH-EP) promoter.---

In claim 21, lines 7 and 11, “and being” was replaced with ---which is---

In claim 35, line 2, ---an--- was inserted before “SH-EP”.

Authorization for this examiner's amendment was given in a telephone interview with Susanne Somersalo on 18 January 2007.

***Reasons for Allowance***

The following is an examiner's statement of reasons for allowance:

The claims are allowed in view of the failure of the prior art to teach or reasonably suggest plant transformation with a complex of constructs comprising a blocking construct comprising a barnase-encoding sequence operably linked to an embryo/germination specific promoter, said blocking sequence being fully inserted into an intron of a transgene of interest; said complex further comprising a recovering construct comprising a barstar-encoding sequence operably linked to a heat shock promoter. Applicant has amended the claims as suggested by the Examiner in the last

Office action. Basis for the Examiner's amendment to claim 15 may be found on page 20 of the specification, top paragraph.

Applicant's attempts to amend the specification in the amendment of 30 October 2006 are acknowledged. Those amendments do not comply with 37 CFR 1.121(b) regarding the proper format for specification amendments performed by Applicant. Accordingly, those amendments are repeated in the above Examiner's amendment.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is 571-272-0795. The examiner can normally be reached on Monday through Friday from 10:30AM to 7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 18, 2007

DAVID T. FOX  
PRIMARY EXAMINER  
GROUP 180 1638

